

Order

Michigan Supreme Court
Lansing, Michigan

May 22, 2007

Clifford W. Taylor,
Chief Justice

ADM File No. 2006-33

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Amendment of
Rule 2.116 of the
Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 2.116 of the Michigan Court Rules is adopted, effective September 1, 2007.

[Additions are indicated in underlining and deletions are indicated in strikeover.]

Rule 2.116 Summary Disposition

(A)-(C)[Unchanged.]

(D) Time to Raise Defenses and Objections. The grounds listed in subrule (C) must be raised as follows:

- (1) The grounds listed in subrule (C)(1), (2), and (3) must be raised in a party's first motion under this rule or in the party's responsive pleading, whichever is filed first, or they are waived.
- (2) The grounds listed in subrule (C)(5), (6), and (7) must be raised in a party's responsive pleading, unless the grounds are stated in a motion filed under this rule prior to the party's first responsive pleading. Amendment of a responsive pleading is governed by MCR 2.118.
- (3) The grounds listed in subrule (C)(4), ~~(8), (9), and (10)~~ and the ground of governmental immunity may be raised at any time, regardless of whether the motion is filed after the expiration of the period in which to file dispositive motions under a scheduling order entered pursuant to MCR 2.401.

- (4) The grounds listed in subrule (C)(8), (9), and (10) may be raised at any time, unless a period in which to file dispositive motions is established under a scheduling order entered pursuant to MCR 2.401. It is within the trial court's discretion to allow a motion filed under this subsection to be considered if the motion is filed after such period.

(E)-(J) [Unchanged.]

Staff Comment: The amendments of MCR 2.116 clarify that motions for summary disposition based on governmental immunity or lack of subject-matter jurisdiction may be filed even if the time set for filing dispositive motions in a scheduling order has expired. Defects in subject-matter jurisdiction cannot be waived and may be raised at any time. *People v Erwin*, 212 Mich App 55, 64 (1995); *People v Richards*, 205 Mich App 438, 444 (1994). Likewise, governmental immunity may be raised at any time. See *Mack v Detroit*, 467 Mich 186, 197 n 13 (2002).

The amendments also clarify that it is within the court's discretion to consider a motion based on the grounds set forth in MCR 2.116(C)(8), (9), or (10), if the motion is filed after the period for dispositive motions established in a scheduling order has expired. This clarification reflects the holding in *People v Grove*, 455 Mich 439 (1997), that it was within the trial court's discretion to decline to accept a plea agreement offered after the date set forth in the scheduling order for accepting such an agreement had passed.

This staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 22, 2007

Corbin R. Davis
Clerk